

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

RICHARD E. KINSEY, JR.,

Defendant.

19-CR-237-V
ORDER

The defendant, Richard E. Kinsey, Jr., was charged in an indictment with conspiring to possess with intent to distribute, and conspiring to distribute, at least 50 grams of methamphetamine, in violation of 21 U.S.C. § 846 (Count 1); using and maintaining a premises for the purpose of manufacturing, distributing, and using methamphetamine, in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2 (Count 2); and possessing firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2 (Count 3). Docket Item 13.

On January 30, 2020, Kinsey moved, *inter alia*, to suppress evidence, Docket Item 30, and the government responded on April 17, 2020, Docket Item 42. United States Magistrate Judge H. Kenneth Schroeder, Jr., heard oral argument on June 10, 2020; granted Kinsey's motion for the preservation of rough notes and for leave to file additional motions; and gave Kinsey until June 19, 2020, to file an affidavit of standing in support of his motion to suppress. During oral argument and by text order issued on June 10, 2020, Judge Schroeder denied Kinsey's nondispositive motions. Docket Item 55.

On July 13, 2020, Kinsey filed an affidavit of standing. Docket Item 66. He asserted that he lived at 320 Newland Avenue, Apartment 4, Jamestown, New York, and therefore had a reasonable expectation of privacy in that residence. *Id.* On that same date, Kinsey filed a second motion to suppress or, in the alternative, for a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). Docket Item 67. Judge Schroeder heard further oral argument on July 14, 2020.

On October 23, 2020, Judge Schroeder issued a Report, Recommendation and Order (“R,R&O”), recommending that Kinsey’s motion to suppress and his alternative request for a *Franks* hearing both be denied. Docket Item 93. Specifically, Judge Schroeder rejected Kinsey’s largely conclusory argument that the confidential informant was unreliable. *Id.* at 5. On the contrary Judge Schroeder found that the confidential informant was sufficiently reliable both because the informant testified in person before Jamestown City Court Judge John L. LaMancuso and because that testimony was corroborated by the sworn statements of City of Jamestown Police Department Detective Jeremy Maggio. *Id.* at 5-6. Because there was no reason to believe that the search warrant otherwise lacked probable cause, Judge Schroeder rejected the defendant’s argument. *Id.* at 6. Moreover, Judge Schroeder reasoned that a commonsense reading of the warrant leads to the obvious conclusion that the hallway closets were part of the premises described in the warrant and that there was no merit to Kinsey’s claim that the search of the hallway closets located inside Apartment 4 was beyond the scope of the warrant. *Id.* at 7.

With respect to Kinsey’s request for a *Franks* hearing, Judge Schroeder found that Kinsey’s generalized and conclusory assertions of unreliability were insufficient and

belied by Judge LaMancuso's handwritten notes. *Id.* at 8. Moreover, Judge Schroeder found that Kinsey had failed to designate which statements in the search warrant application were supposedly false or made with reckless disregard for the truth. *Id.* at 9. Judge Schroeder concluded that "[s]uch speculation does not satisfy the requirements imposed by the Supreme Court to warrant the holding of a *Franks* hearing." *Id.*

The parties have not objected to the R,R&O under Title 28, United States Code, Section 636(b)(1), and Rule 59(b) of the Federal Rules of Criminal Procedure, and the time to object now has expired. For that reason, the defendant has waived his right to have the R,R&O reviewed. See Fed. R. Crim. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review."). Nevertheless, in its discretion, this Court has carefully reviewed the R,R&O and the submissions to Judge Schroeder. Docket Items 30, 42, 66, 67 and 93. Based on that review and the absence of any objection, and for the reasons stated above and in the R,R&O, this Court adopts the R,R&O in its entirety. Kinsey's motion to suppress, or in the alternative for a *Franks* hearing, is DENIED.

SO ORDERED.

Dated: November 16, 2020
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE